IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 112/2000

Shri Devidas Rama Chari,
Resident of House No.1028,
Bazar, Shiroda, Goa. ..... Petitioner.

V/s.

1) M/s. Bharat Petroleum Corporation Ltd.,
Ballard Estate, Mumbai – 400 038.

2. The Divisional Manager,
Bharat Petroleum Corporation Limited,
Plot No.32, EDC Complex,
Post Box No.228, Patto, Panaji, Goa.

3. Shri Jayant M. Miringkar,
resident of Chikangal,
Shiroda, Goa. ..... Respondents.

Mr. N.N. Sardessai, Advocate for the petitioner.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. R.S. Sardessai, Advocate for respondents No.1 and 2.

Mr. M.S. Sonak, with Ms. A. Shirodkar, Advocates for respondent No.3.

CORAM : S.A. BOBDE &
N.A. BRITTO, JJ.

DATE : JULY 5, 2004.

ORAL JUDGMENT : (Per BRITTO, J.)

The petitioner, in a petition under Articles 14, 226 and 227 of the Constitution of India, challenges the allotment of a petrol

pump/retail outlet by respondent No.1 in favour of respondent No.3 at Borim, Ponda.

2. Briefly stated, respondent No.1 (`Company' for short) published an advertisement on or about 27.3.1993, seeking applications from eligible persons for being appointed as a dealer as per eligibility criteria prescribed therein. Although the petitioner claims to have land in Village Shiroda, the petitioner did not respond to the said advertisement. Respondent No.3 did respond and so did many others.

3. Subsequently, the Oil Selection Board which, we are told, was presided over by a retired High Court Judge at the relevant time, shortlisted respondent No.3 and respondent No.3 was issued with a letter of intent dated 7.1.1994. As per the said letter of intent, respondent No.3 was required to arrange for a suitable plot of 50 x 50 metres at Shiroda on Ponda - Sanvordem road within a period of four months and was also required to comply with other conditions. Respondent No.3 went on representing to the Company that he was unable to find a suitable plot within Shiroda Village, as per the said advertisement and finally submitted a letter from the Grampanchayat of Shiroda, dated 5.7.1994 certifying that a plot was not available for the purpose of setting up a petrol pump/retail outlet at Shiroda. Respondent No.3 also represented that a plot was available at a nearby location at Borim. This proposal of respondent No.3 was subsequently

put up before a committee consisting of the representatives of the industry which, at its meeting, held on 21.3.1996 was pleased to approve the site at Borim and, subsequently, at the new site at Borim, the said petrol pump/retail outlet came to be commissioned on 31.3.1996. Prior to that, at the instance of respondent No.3, the Additional District Magistrate, Panaji by a Public Notice on Official Gazette dated 7.3.1996 and `Gomantak Times' and `Sunaprant' dailies, dated 1.3.1996 sought objections from the interested persons against the setting up of the said petrol pump at Borim. None objected.

4. The said allotment of the petrol pump in favour of respondent No.3 by the Company is sought to be assailed by the petitioner as being arbitrary, as not complying with the very guidelines issued by the Company for allotment and/or location of the petrol pump/retail outlets. A copy of the said guidelines known as "VOLUME/DISTANCE NORMS FOR SETTING UP RETAIL OUTLETS" have been produced. The relevant guideline reads as follows :

> " C. **Locations which meet V/D norms and where there is no response to Advertisement/No eligible candidate/suitable land not being available.**
>
> Dealership must be advertised at least twice. One advertisement released should be under the revised guidelines.
>
> NOTE : All `substitute' locations in lieu of `dropped' locations, must be in the same S.O.C/Class of market in the same State is permissible after Industry Members' concurrence at SLC level that no location meeting V/D norms is available in the same class of

> market as that of the “dropped” location.
>
> All `substitute' locations must be concurred at SLC level by all Industry Members for inclusion in a Market Plan/Supplementary.
>
> Advertisements for `substitute' locations can be released only after these are included in a subsequent Marketing Plan/Supplementary.”

5. The action of not advertising twice because no suitable place was available at Shiroda or the action of not readvertising at the changed place at Borim, is sought to be justified by the respondents by submitting that the place next chosen at Borim was on the same road, viz. the said Sanvordem-Ponda road, as well as with the same constituency of Shiroda. We are not inclined to accept the said contention of the respondents that the next changed location being within the same constituency, as well on the same road, would have made no difference. In our opinion, within the same constituency there may have been different places which could be within the municipal areas as well as outside such limits and also there could have been places which were more commercially viable than others. The same could be said in relation to the said Ponda-Sanvordem road. Considering the guidelines, to which reference has been made, we are of the *prima facie* view that the Company was required to readvertise at least twice in case no suitable place was available in Shiroda. The location at Shiroda, which was advertised, has to be considered as a location within the area comprising of Village Panchayat of Shrioda, because there is a certificate

from the Village Panchayat, which was produced by respondent No.3 in support of his plea that there was no place available to set up the said petrol pump at Shiroda.

6. We are of the view that the action of the Company has got to be considered as arbitrary because the Company has not followed its own guidelines. For the sake of transparency, in public action the Company was required, even after Industry Members concurred regarding the change in location, to advertise again and call for fresh applications for dealership, since the location was admittedly changed from one Village to another and at a place which was more advantageously situated. Nevertheless, we are of the view, considering the facts of this case and gross delay and laches on the part of the petitioner, that it will be inequitable to grant any relief in favour of the petitioner as against respondent No.3.

7. As already stated, the said petrol pump/retail outlet was commissioned on 31.3.1996 and the present petition came to be filed by the petitioner only on 2.3.2000. It is true that earlier this Court had dismissed a petition filed by one Uday Madhukar Halarnkar on 9.6.1999. The said petition which is said to have been filed by the said Uday Halarnkar, in public interest, was dismissed by this Court as withdrawn. It is the contention of the petitioner that because of the said Writ Petition No.153/1996 that the petitioner did not approach this

Court immediately. However, it can be seen that the petitioner has made no averments in that regard either in the said notice dated 27.1.2000 addressed to the said Company or for that matter in the petition itself, though a faint and belated attempt has now been made in the affdavit-in-sur-rejoinder presently filed in the course of hearing of this petition. Respondent No.3 has explained in his affidavit that in order to apply for putting up the said petrol pump/retail outlet, he had to leave his job at Hotel Mandovi where he was working as a confirmed employee and from which service he resigned in the year 1996. Respondent No. 3 in his affidavit has also explained that he made substantial investments in terms of money and that he has virtually spent 8 years of his life towards the establishment of the petrol pump/retail outlet and not only that, for the year 2002-03 he even got an award from the said Company as Best Goa Retail Outlet. Respondent No.3 has also explained that he invested about Rs.1,00,000/- towards the construction of the building and for purchasing office furniture and equipments. The said affidavit of respondent No.3 shows that respondent No.3 has almost changed his way of life from a paid employee to a businessman. In other words, the equities of the case weigh heavily in favour of respondent No. 3 as against the petitioner.

8. As already stated, the petitioner has not at all explained the delay of almost four years in approaching this Court with this petition, which is again in the nature of a public interest litigation because it is

not the case of the petitioner that he did apply for the dealership of setting up the petrol pump, when it was advertised for Shiroda Village or for that matter he was capable of arranging any land at Borim Village to set up the same. The petitioner has also not stated that he was not aware that the petrol pump was commissioned on 31.3.1996 at Borim. Admittedly, the petrol pump was set up at the instance of respondent No.3 at the junction of two roads at Borim-Ponda.

9. In the case of ***Ramana Dayaram Shetty vs. International Airport Authority of India and ors.*** ((1979) 3 SCC 489), a writ petition was filed by the petitioner more than five months after the acceptance of the tender of respondent No.4 and during that period respondent No.4 had incurred considerable expenditure, aggregating to about Rs.1,25,000/- in making the arrangements for putting up the restaurant and the snack bars and in fact had set up the snack bars and started running the business. In that situation, the Supreme Court observed that it would be most inequitous to set aside the contracts of respondent No.4 at the instance of the petitioner. The Supreme Court further observed that the position would have been different if the petitioner had filed the writ petition immediately after acceptance of the tender of respondent No.4, but the petitioner allowed a period of over five months to elapse during which respondent No.4 altered their position. The Supreme Court, therefore, concluded that it was not a fit case in which the Court should interfere and grant relief to the petitioner in the

exercise of discretion under Article 226 of the Constitution.

10. Again, in the case of ***State of M.P. And ors. vs. Nandlal Jaiswal and ors.*** ((1986) 4 Supreme Court Cases 566), the Supreme Court observed that it was well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. **The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience, but also injustice on third parties.** When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction [emphasis supplied]

11. In the case of ***The Printer (Mysore) Ltd., vs. M.A. Rasheed & Ors.*** (2004(3) Supreme 97), the petitioner had approached the High Court after a period of three years to obtain setting aside of a Deed of Sale executed by the Bangalore Development Authority and the Supreme Court held that the High Court ought not to have entertained the writ petition, keeping in view the fact that it was filed about three years after making of the allotment and execution of the Deed of Sale. The Supreme Court further held that the High Court should have dismissed the writ petition on the ground of delay and laches on the part of the first respondent.

12. In the case of ***State of Maharashtra vs. Digambar,*** ((1995) 4 SCC 683), the Supreme Court has again observed that the power of the High Court to be exercised under Article 226 of the Constitution, if discretionary, its exercise must be judicious and reasonable. If it is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if it is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the Court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct. The Supreme Court cited with approval what Sir Barnes Peacock had to say in ***Lindsay Petroleum Co.***

vs. Hurd, ((1874) 5 PC 221), thus :

> "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by this conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other so far as it relates to the remedy."

13. As seen from the observations of the Supreme Court, which are squarely applicable to the facts of this case, the petitioner has approached this Court with an unexplained delay of about four years and the Court is certainly not expected to assist such a petitioner who has been tardy and indolent and, who, by the passage of time has allowed respondent No.3 to set up the petrol pump/retail outlet by investing considerable amount of money. As said before, in doing the same, respondent No.3 has certainly changed his entire way of life and it will not be proper to displace him from the same.

14. A submission on behalf of the petitioner was also made that a

petition once admitted could not be dismissed on the ground of delay and laches and in support of the submission, reliance, amongst others, was placed on the case of ***S. Gurmej Singh Hira Singh vs. The Election Tribunal, Gurdaspur and ors.*** (AIR 1964 Punjab 337), wherein the Full Bench of Punjab & Haryana High Court had held that undue delay as a circumstance disentitling the aggrieved party to invoke the Court's jurisdiction under Article 226 is obviously not a statutory rule of limitation. Further the Court had observed that indeed it is in part inspired by the consideration that the time of the Court should not be wasted by invoking its extraordinary jurisdiction after long delay. The party seeking assistance of the Court is accordingly expected to be reasonably prompt and vigilant in approaching the Court. If, therefore, the Court, after hearing the petitioner, admits the writ petition and issues a rule nisi and at the hearing after actually adjudicating upon the merits of the controversy, comes to a positive conclusion in favour of the petitioner, that may also be a factor which, to some extent, may reasonably weigh against the refusal to exercise discretion in granting relief to the aggrieved party. The controversy raised in the proceedings would have inevitably to be considered by the Court and when the matter comes up on appeal, at a later stage.

15. Needless to observe that the Full Bench has not laid down any broad proposition that if a petition is admitted, the same has got to be necessarily decided on merits.

16. On behalf of the respondents, our attention has been drawn to a Judgment of the Division Bench of this Court in the case of ***Bajaj Auto Ltd. & ors. vs. The Union of India & ors.*** (1992 (2) Bom. C.R. 366), wherein this Court observed thus :

> "Another argument advanced was that once a rule is issued, there is no escape for the Constitutional Court than to pronounce a decision on merits. We are unable to accept that as an inviolable and inflexible proposition. A rule is likely to be issued on the basis of the *prima facie* evaluation of the contentions projected in a writ petition. Quite often, final hearing takes time. That is our sad experience. It may subsequently transpire that the Rule was issued wholly erroneously. This may be in evidence by a Return or even demonstrated sometimes in the course of the hearing on inter-locutory relief. If the Court comes to know of the circumstances which make it realise that the mistake was committed by it in issuing the Rule, it does not stand to reason that the party guilty of such misrepresentation or suppression of facts, should receive from the Constitutional Court an indulgence and luxury in the form of compulsory adjudication on the merits of the case".

17. On behalf of the petitioner, no effort has been made to persuade us to take a contrary view to the view held by the Division Bench of this Court in the case of ***Bajaj Auto Ltd. & ors. vs. The Union of India & ors.*** (supra). We too have no reasons not to follow the same. In the circumstances, the petitioner's contention that once the petition is admitted, the same has got to be decided on merits, cannot be accepted.

18. In view of the above, we are not at all inclined to interfere with

the decision of the Company in allotting the said petrol pump/retail outlet in favour of respondent No. 3. Consequently, the petition is, hereby, dismissed. We, however, leave the parties to bear their own costs.

S.A. BOBDE, J.

N.A. BRITTO, J.

ssm.